



January 11, 2013

Via electronic mail to fnh@cpuc.ca.gov, jva@cpuc.ca.gov, and
public.records@cpuc.ca.gov

Fred Harris
Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re Draft Resolution L-436

Dear Mr. Harris:

The Cogeneration Association of California (CAC)¹ submits these comments on revised draft Resolution L-436 pursuant to the schedule set in your letter dated December 19, 2012. CAC again affirms its support for the Revised Draft Resolution, the proposals for improving the public's access to records of public utilities regulated by this public agency, and revised General Order (GO) 66-D. The California Public Utilities Commission should adopt the Revised Draft Resolution with revised draft GO 66-D and move forward as expeditiously as possible to institute the improvements to public access set forth within the draft Resolution.

Institution of Automatic, Regular Disclosures Pursuant to D.06-06-066, et seq.

CAC sought inclusion in draft Resolution L-436's scope the automatic disclosure of electric utility procurement data which Decision 06-06-066, et seq., and the accompanying Matrix deem not market sensitive. Notably, as detailed in the draft Resolution, Decision 06-06-066 and the Matrix explicitly and clearly limited not only what data were confidential but also how long data could be kept under seal. Specifically, "confidential" electric public utility procurement data is only "market sensitive" for a maximum of three years, then it is to be released as public data.² The draft Resolution

¹ CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

² Decision 06-06-066, as modified by D.7-05-032, at 73; see also D.07-05-032, at 5-6 ("*generally the reasons for withholding such information from public disclosure are no longer relevant after a few years ... If the information at issue is no longer market sensitive, because, pursuant to D.06-06-066, it no longer has the potential to materially affect the market price for electricity, then there is no requirement that the Commission maintain its confidentiality. Not only is such information public, pursuant to the CPRA and the California Constitution, but there is no public policy that would weigh in favor of keeping it confidential.*").



rightly acknowledges that “the absence of disclosure can also harm markets”³ and states,

We agree with CAC that we should make sure records identified in the matrix as confidential for a limited time are accessible or automatically made public once the confidentiality period ends, and that we should develop procedures for dealing with overzealous and incorrect assertions that information is subject to a confidentiality matrix.⁴

A process for automatic and regular disclosure is to be developed through workshops. CAC reiterates its support for the proposed workshop process, with one caveat. That is:: Justice delayed is justice denied. The Commission’s policy has been set since 2006; it is past time for implementation. The workshop process and the time involved to develop a process for automatic, regular disclosure should not serve to obstruct or be permitted to enable any party’s obstruction of access to non-market sensitive data. With this understanding, CAC commits to working with staff and other stakeholders to help improve transparency with an automatic, regular process for disclosure of non-market sensitive data pursuant to D.06-06-066, et seq. and the Matrix.

Adopt New General Order 66-D

The proposed new GO 66-D rightly observes, “*The business sensitivity of information generally declines over time and the balancing of interests for and against disclosure may change accordingly.*”⁵ CAC agrees and urges adoption of the new GO 66-D. The Commission should adopt the draft Resolution and embark on the workshops proposed to continue improving transparency and access to public records.

Sincerely,

ALCANTAR & KAHL LLP

A handwritten signature in blue ink that reads 'Nora Sheriff'.

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Counsel to the Cogeneration Association of California

³ Draft Resolution L-436, at 69.

⁴ Draft Resolution L-436, at 79.

⁵ Draft Resolution L-436, at Attachment 1, at 13, Section 2.2.4.2.